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No. 130.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931.

DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, PETITIONERS.

VS.

BEN TERTE, JUDGE OF THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI, AT KANSAS CITY, MISSOURI, RESPONDENT.

RESPONDENT'S BRIEF ON SUBMISSION.

CLAY C. ROGERS,
Counsel for Respondent.

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DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, PETITIONERS.

VS.

BEN TERTE, JUDGE OF THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI, AT KANSAS CITY, MISSOURI, RESPONDENT.

RESPONDENT'S BRIEF ON SUBMISSION.

STATEMENT OF THE CASE.

Ray Curtis, an assistant signal maintainer, was injured while working for petitioners in and about the repair of an interlocking plant and signal device at Pueblo, Colorado, owned by the Atchison, Topeka and Santa Fe Railway Company. The Rio Grande is a

Delaware corporation; the Santa Fe, a Kansas corporation. This action, under the Federal Employers Liability Act (45 USCA ss. 15-59), was brought in Missouri, the state of Curtis' nativity, to which Curtis was forced to return because of his helpless and destitute condition caused by the joint negligence of both defendants, and where Curtis is a *bona fide* resident and citizen.

It is conceded that the Santa Fe owns and operates a line of railways in Missouri; is licensed to do business in Missouri; and is actually engaged in doing both interstate and intrastate business in Missouri (R. 25). Jurisdiction over the Santa Fe is asserted by service of process upon the resident general agent of the Santa Fe in charge of the office at Kansas City, Missouri, in accordance with Missouri statutes.

The Rio Grande operates no line of railways in Missouri. It maintains, however, two principal offices in Missouri for the purpose of carrying on and doing a railroad business in the state, one in St. Louis and the other in Kansas City. It is conceded that the Rio Grande solicits freight and passenger business in Missouri. The evidence further shows that the Rio Grande keeps a complete set of books and records at its offices appertaining to the movement and disposition of freight into Missouri, and that it dispenses information to local shippers concerning the whereabouts of shipments coming into the state. It pays city, county and state taxes upon property permanently located and owned by it in the State of Missouri. It pays salaries to its agents and employees in Missouri and the rent

for the three rooms occupied by it in Kansas City. These offices have been established in Kansas City for over ten years. At times distinguished persons and invalids are assisted and looked after upon their arrival in Missouri. This is done upon instructions from the Rio Grande. Kleine, general agent for the Rio Grande, further testified that "we would do that on request of a connecting line or any one, where we participated in the business in any way, which is a part of the railroad business." He further testified that he would do "anything to promulgate the business of the company" (R. 56-62).

REASONS FOR DENIAL OF WRIT.

1. The Santa Fe, having been licensed to do business in Missouri and actually engaged in doing intrastate business there, has submitted to the jurisdiction of the courts of Missouri, *Penn. Fire Ins. Co.* v. *Gold Issue M. & M. Co.*, 243 U. S. 93, has consented to suit there, *International Harvester Co.* v. *Kentucky*, 234 U. S. 579, is suable there because of its presence in the state, *Philadelphia & R. R. Co.* v. *McKibbin*, 243 U. S. 264, on a cause of action arising in a foreign state under the Federal Employers Liability Act, 45 USCA Sec. 56, *Hoffman* v. *State of Missouri*, 274 U. S. 21, as fully as if incorporated in the state, Missouri Rev. Stat., 1929, Sec. 4689, *Bethlehem Motors Corp.* v. *Flynt*, 256 U. S. 421, and the prosecution of such a suit there is neither lacking in due process of law, *Commercial Mutual Acc. Co.* v. *Davis*, 213 U. S. 245, nor unreasonably burden-

some on interstate commerce, *Hoffman* v. *State of Missouri, supra.*

2. The Rio Grande is doing business in Missouri within the rule announced by this court in *St. Louis Ry. Co.* v. *Alexander,* 227 U. S. 218, and jurisdiction may be asserted against it *in personam* for the same reasons and upon the same authorities applicable to the Santa Fe. Because its property in Missouri has been attached and garnisheed, it is subject to a judgment *in rem,* and the jurisdiction so asserted neither contravenes the Commerce Clause, *State of Missouri* v. *Taylor,* 266 U. S. 200, nor violates the Fourteenth Amendment, *Davis* v. *Cleveland, etc. Ry. Co.,* 217 U. S. 157.

3. The failure to comply with Rule 27, Par. 2 (e) of this court is sufficient reason for denying the writ as to the Santa Fe. (Rule 38, Par. 2)

ARGUMENT.

I.

Santa Fe's Non-compliance With Rules.

The petition for certiorari is filed on behalf of both the Santa Fe and the Rio Grande, but no errors are assigned, urged or argued by the Santa Fe. The petitioners in "Questions Presented" raise only the question of jurisdiction as to the Rio Grande. Even as to the Rio Grande, the question of jurisdiction is limited to a violation of the Commerce Clause (R. 6-8).

The revised rules of this court, Rule 38, Par. 2, provides:

> "A supporting brief may be included in the petition, but, whether so included or presented separately, it must be direct, concise and in conformity with Rules 26 and 27. A failure to comply with these requirements will be sufficient reason for denying the petition. See *United States* v. *Rimer*, 220 U. S. 547; *Furness, Withy & Co.* v. *Yang Tsze Insurance Assn.*, 242 U. S. 430; *Houston Oil Co.* v. *Goodrich*, 245 U. S. 440; *Layne & Bowler Corporation* v. *Western Well Works*, 261 U. S. 387, 392; *Magnum Import Co.* v. *Coty*, 262 U. S. 159, 163; *Southern Power Co.* v. *North Carolina Public Service Co.*, 263 U. S. 508."

Rule 27 above referred to, Par. 2 (e) provides that the brief shall contain,

> "A specification of such of the assigned errors as are intended to be urged."

A failure to comply with these requirements will be sufficient reason for denying the petition. (Rule 38, Par. 2)

II.

It will be our purpose, however, not only to consider the question of jurisdiction as to the Rio Grande with reference to a violation of the Commerce Clause (which is the only question presented by the petitioners) and the Fourteenth Amendment, but also the question of jurisdiction as to the Santa Fe as affected by the Commerce Clause and the Fourteenth Amendment.

Jurisdiction As to the Santa Fe.

Under all of the decisions of this court, the Santa Fe is suable in Missouri on the transitory cause of action alleged, whether it be on the theory of submission, implied consent or presence. The Santa Fe is licensed to do business in Missouri, in compliance with Missouri Revised Statutes, 1929, Section 4598, (quoted in appendix). It owns and operates railroad trackage in Missouri. It engages not only in interstate business, but also intrastate business in Missouri. It is admitted by petitioners that the Santa Fe "while not incorporated in the state, does business therein under a license or permit" (B. 8). It has therefore submitted to the jurisdiction of Missouri courts. *Penn. Fire Ins. Co.* v. *Gold Issue M. & M. Co.*, 243 U. S. 93.

The Santa Fe is also suable in Missouri because, being licensed to do business there and having appointed a resident agent upon whom service may be had and

actually doing business in the state, it has impliedly consented to the jurisdiction, under the provisions of the Missouri Revised Statutes, 1929, Section 4689, cited in appendix, among others, which provides that a foreign railroad corporation doing business in Missouri subjects itself to "all the duties, liabilities and provisions of the laws of this state concerning railroad corporations, as fully as if incorporated in this state." *International Harvester Co.* v. *Kentucky*, 234 U. S. 579.

Missouri Revised Statutes, 1929, Sections 728, 742, 743 and other provisions of Section 4689, all quoted in the appendix also lend support to these two contentions.

The Santa Fe is also suable in Missouri under the rule of *Philadelphia & R. R. Co.* v. *McKibbin*, 243 U. S. 264, one of the cases cited by petitioners herein, because it is present in Missouri. Mr. Justice Brandeis, who delivered the opinion of this court in the McKibbin case, stating the rule, said:

> "A foreign corporation is amenable to process to enforce a personal liability, in the absence of consent, only if it is doing business within the State in such a manner and to such an extent as to warrant the inference that it is present there."

Other cases support generally the contention that the Santa Fe is suable in Missouri on the cause of action alleged, among which are: *Baltimore & O. R. Co.* v. *Harris*, 12 Wall. 65; *New England Mutual L. Ins. Co.* v. *Woodworth*, 111 U. S. 138; *New York L. E. & W. R. Co.* v. *Estill*, 147 U. S. 591; *Barrow S. S. Co.* v. *Kane*, 170 U. S. 100; and *Dennick* v. *Railroad Co.*, 103 U. S. 11. The cases of *Penn. Fire Ins. Co.* v. *Gold Issue*

M. & M. Co., supra, New York, L. E. & W. R. Co. v. *Estill, supra, Commercial Mutual Acc. Co.* v. *Davis,* 213 U. S. 245, and *Hoffman* v. *State of Missouri,* 274 U. S. 21, hold that service in compliance with the Missouri Statutes—and there is no contention on the part of the petitioners that the Missouri service statutes have not been complied with—is not lacking in due process of law nor unreasonably burdens some to interstate commerce.

Nor is this case comparable to *Simon* v. *Southern Ry. Co.,* 236 U. S. 115, or *Chipman* v. *Jeffries Co.,* 251 U. S. 373, cited by petitioners. One distinction lies in the fact that the Supreme Court of Missouri has directly held that foreign railroad corporations are suable in Missouri in an action (brought under the Federal Employer's Liability Act) arising in another state (*Bright* v. *Wheelock,* 323 Mo. 840, 20 S. W. (2d) 684; *Shaw* v. *Chicago & Alton R. Co.,* 314 Mo. 123, 130, 282 S. W. 416; *Wells* v. *Davis,* 303 Mo. 388, 261 S. W. 58; *State of Missouri, ex rel. Foraker* v. *Hoffman,* 309 Mo. 625, 274 S. W. 362), and further that it is the duty of Missouri courts to take jurisdiction of such cases (*Bright* v. *Wheelock, supra*), and that said courts do not have discretion to refuse to entertain jurisdiction in such cases as held in the case of *Douglas* v. *Railroad Co.,* 279 U. S. 377.

Another distinction is pointed out by Mr. Justice Holmes in the case of *Penn. Fire Ins. Co.* v. *Gold Issue M. & M. Co., supra,* where this court commenting upon the Simon case said:

"The defendant relies upon *Old Wayne Mutual Life Ass.* v. *McDonough,* 204 U. S. 8, 51 L. Ed. 345, 27 Sup. Ct. 236, and *Simon* v. *Southern R. Co.,* 236 U. S. 115, 59 L. Ed. 492, 35 Sup. Ct. Rep. 25. But, the distinction between those cases and the one before us is shown at length in the judgment of the court below, quoting a brief and pointed statement in *Smolik* v. *Philadelphia & R. Coal and I. Co.,* 22 Fed. 148—a statement reinforced by Cardozo, J., in *Bagdon* v. *Philadelphia & R. Coal & I. Co., supra.* In the above mentioned suits the corporations had been doing business in certain states without authority. They had not appointed the agent as required by statute, and it was held that service upon the agent whom they should have appointed was ineffective in suits upon causes of action arising in other states. *The case of service upon an agent voluntarily appointed was left untouched.* 236 U. S. 129, 130." (Italics supplied.)

No decision of this court holds that the jurisdiction asserted against the Santa Fe in this case unreasonably burdens interstate commerce. On the contrary, this court in *Hoffman* v. *State of Missouri, supra,* held that a defendant domestic railroad corporation is suable in Missouri on a foreign tort even by a non-resident. (Curtis, the plaintiff in the instant case, however, is a *bona fide* resident of Missouri.)

In the Hoffman case the cause of action, based upon the Federal Employers' Liability Act, arose in Kansas, where the employee, whose death ensued as a result of the tort resided in Kansas, and, where the administrator of his estate also resided. The action was brought in Missouri against the railroad company which was licensed to, and was doing business in

Kansas and subject to the jurisdiction of the Kansas courts. Objection was made to the prosecution of the action in the Missouri court on the ground that to require the railroad company to bring its witnesses from Kansas into Missouri to defend the case would constitute an unreasonable burden on interstate commerce. The Circuit Court of Pettis County, Missouri, refused to entertain jurisdiction of the case for that reason. Upon application for mandamus at the relation of the administrator, to compel the circuit court to take jurisdiction, the Supreme Court of Missouri (*State ex rel. Foraker* v. *Hoffman, Judge,* 309 Mo. 625), held that the action was properly maintained in Missouri. Upon a writ of error from that decision, this court held that the state court had jurisdiction of the action.

The Santa Fe is doing business in Missouri to the same extent as the defendant in the Hoffman case. For jurisdictional purposes here, we believe, there is no significant legal difference between the presence and amenability to suit in Missouri of a corporation there domesticated, and a foreign corporation licensed and actually engaged in the same identical business in the same state. Mr. Justice McKenna precisely stated the rule in *Bethlehem Motors Corp.* v. *Flynt,* 256 U. S. 421, as follows:

> "This court has decided too often to need citation of the cases that corporations doing business in a state and having an agent there are within the jurisdiction of the state for the purpose of suit against them, * * * and subject

to its laws, equally with corporations of the state."

In their attempt to distinguish the case of *State of Missouri* v. *Taylor*, 266 U. S. 200, from the instant case, the petitioners virtually admit, on page 16 of their brief, these contentions that the Santa Fe in this case is to be treated as a domestic corporation, by referring to the plaintiff in the Taylor case (a Delaware corporation, also maintaining a place of business in Missouri and doing business there, as follows:

> "*Second*, the plaintiff was, in a practical sense, a resident of Missouri."

From this premise, the conclusion is inescapable that the Santa Fe here is also, "in a practical sense, a resident of Missouri."

Furthermore, Congress has in the Federal Employer's Liability Act (45 USCA Sec. 56), so provided:

> "Under this chapter an action may be brought in a district court of the United States, in the district * * * in which the defendant is doing business at the time of commencing such action."

It is also provided by the Federal Employer's Liability Act that in such cases the state court shall have concurrent jurisdiction with the federal courts. (45 USCA Sec. 56). Every reason supports the conclusion that Congress in the above enactment intended that state courts shall have equal authority with that of federal courts in such cases, (*Mondou* v. *New York, N. H. & H. R. Co.*, 223 U. S. 1), subject,

of course, to local state restrictions (*Douglas* v. *Railroad Company, supra*).

It is needless to say the defendant railroads in the cases of *Michigan Central R. Co.* v. *Mix,* 278 U. S. 492, *Davis* v. *Farmers Co-Operative Equity Co.,* 262 U. S. 312, and *Atchison, Topeka & Santa Fe Ry. Co.* v. *Wells,* 265 U. S. 101, were not doing business in the states where suit was brought.

The jurisdiction asserted against the Santa Fe, therefore, is not lacking in due process of law, does not unreasonably burden interstate commerce, since its assertion is confined to the limits set out by Congress itself, and is in conformity with the applicable decisions of this court.

III.

Jurisdiction As to the Rio Grande.

Jurisdiction of the Rio Grande is asserted: (1) *in personam,* by personal service upon the resident general agent in charge of the office of the Rio Grande in conformity with Missouri Statutes, (see appendix), and (2) *in rem,* by the attachment and garnishment of property (traffic balances) of the Rio Grande in Missouri. Preliminary to a discussion of these questions, it will be observed from an examination of the brief of the Rio Grande in support of its petition, that no distinction whatsoever is made or recognized by the Rio Grande between this two-fold assertion of jurisdiction against it in this case. That there is a crucial distinction involving different considerations between the jurisdiction asserted against the Rio Grande *in*

personam and *in rem*, is exemplified by the case of *State of Missouri* v. *Taylor*, 266 U. S. 200, where although the defendant foreign railroad corporation was not doing business in Missouri and had no office or agent there, recovery was nevertheless allowed against *property* of the defendant attached in the state on a transitory foreign cause of action against a foreign railroad corporation engaged in interstate commerce. Referring to *State of Missouri* v. *Taylor, supra*, the petitioners recognize this distinction in so many words (B. 16), as follows:

> "First, that was a proceeding *in rem* in which no personal judgment was sought, nor could such be entered. *As to such proceedings in rem different rules of law are applicable* (*Pennoyer* v. *Neff*, 95 U. S. 714)."

This question will be fully considered later.

(1) JURISDICTION *in personam* AS TO THE RIO GRANDE.

The petitioner Rio Grande predicates its contention that the jurisdiction *in personam* of the Rio Grande is offensive to constitutional provisions, evidently upon the ground that the Rio Grande is not doing business in the State of Missouri. Except for the bald assertion that the Rio Grande is not "doing business" in Missouri, no further statement is made by the Rio Grande to show that under the applicable decisions of this court, the Rio Grande is in fact *not* engaged in "doing business." Petitioner Rio Grande thus assumes without argument, not only a controverted issue in this case, but an issue which may be decisive as to jurisdiction over the Rio Grande *in per-*

sonam. If the Rio Grande is doing business in Missouri sufficient to "warrant the inference that it is present there," then the position of the Rio Grande in this law suit (so far as jurisdiction *in personam* is concerned) is identically the same as that of the Santa Fe hereinbefore considered.

RIO GRANDE DOING BUSINESS IN MISSOURI.

The Rio Grande assumes without argument that its business activities are limited to the solicitation of freight and passenger business which is admittedly insufficient under the rule announced in *Green* v. *C. B. & Q.*, 205 U. S. 530, cited by petitioners on another point, to sustain jurisdiction in that kind of a case. Unquestionably, in our opinion, the evidence without contradiction shows that the activities of the agents of the Rio Grande in Missouri are not confined to the mere solicitation of business there.

The record discloses that the Rio Grande maintains two principal offices in Missouri, one in St. Louis and the other in Kansas City; that it pays city, county and state taxes upon property permanently located and owned by it in the State of Missouri; that it pays salaries to its agents and employees in Missouri; that it pays the rent to three rooms occupied by it in Kansas City; that its offices have been established there for more than ten years; that it keeps a complete set of books and records at its offices appertaining to the movement and disposition of freight into Missouri kept by a *clerical* force; that these records are kept until the shipment is satisfactorily completed to the

local consignees; that it dispenses information to local shippers concerning the whereabouts of shipments coming into the state; that it gives local shippers or customers information concerning shipments, time of arrival and "things of that sort," which is a usual and customary part of its business; that the records of shipments made into Missouri are kept for tracing purposes; that both offices in the state communicate with each other regarding freight shipments and passengers; that distinguished persons and invalids are assisted and looked after upon their arrival in Missouri; that such assistance is given upon instructions from the Rio Grande, or, as Kleine, resident general agent for the Rio Grande, testified, "we do that on request of a connecting line or anyone, *where we participated in the business in any way;*" that this assistance given to passengers is a part of its railroad business; that its agent, Kleine, would do anything that would promulgate the business of the company (R. 56-62).

The fact that the business carried on by a corporation is entirely interstate in character does not render the corporation "immune from the service of process under the laws of the State in which it is carrying on business." *International Harvester Co.* v. *Kentucky*, 234 U. S. 579; *Davis* v. *Farmers' Co-Op. Equity Co.*, 262 U. S. 312.

Under the facts of this case as above outlined, the Rio Grande was doing business in Missouri under the rule announced by this court in *St. Louis Ry. Co.* v. *Alexander*, 227 U. S. 218. In the Alexander case it is stated that:

"The testimony discloses that the two roads together constitute a continuous line from St. Louis, through the states of Illinois, Missouri, Tennessee, Arkansas, and Louisiana into Texas, and are together known as the 'Cotton Belt Route.' This combination has an office in the city of New York, upon the door of which, as upon the stationery and literature of the companies, the symbol, 'Cotton Belt Route,' is found in use. Underneath appears the general description, 'St. Louis Southwestern Lines,' and there is also named a general eastern freight agent and traveling freight agent of the lines. With this joint freight agent at the office in New York the matter of the plaintiff's claim was taken up and considered, and correspondence concerning it was had through his office and a settlement of the claim attempted. It was only after such negotiations for a settlement had failed that this action was brought. Here, then, was an authorized agent attending to this and presumably other matters of kindred character, undertaking to act for and represent the company, negotiating for it, and in its behalf declining to adjust the claim made against it. In this situation we think this was the transaction of business in behalf of the company by its authorized agent in such a manner as to bring it within the district of New York, in which it was sued, and to make it subject to the service of process there."

In stating the rule upon which the above judgment was predicated, Mr. Justice Day said:

"This court has decided each case of this character upon the facts brought before it, and has laid down no all-embracing rule by which it may be determined what constitutes the doing of business by a foreign corporation in such manner as to subject it to a given jurisdiction. In a general way it may be said that the business must be such in character and extent as to warrant the inference

that the corporation has subjected itself to the jurisdiction and laws of the district in which it is served, and in which it is bound to appear when a proper agent has been served with process."

The instant case is stronger on the facts than the Alexander case. The doing of railroad business is the transportation of freight and passengers. An integral and important part of that business is not only the assistance or service given to passengers but also to shippers. The assistance or service given to a shipper in tracing his consignment, in locating it, is no different in character than the attempt to adjust or the payment of the claim which results in the loss of such shipment. So, likewise, the assistance of passengers, such as invalids and distinguished personages, in Missouri, is as important an act of railroad business as the sale of the ticket. Certainly, the rendition of services as above outlined cannot be denominated and defined as a mere solicitation of business. It is more than solicitation; it is one of the numerous activities of railroad corporations that comes *after* solicitation, and is, for purposes of jurisdiction here, comparable to the adjustment of claims or sale of tickets. Coupled with the facts that the Rio Grande owns property, permanently located in Missouri, upon which it pays taxes, has a *clerical* office force here, and a resident general agent, which has been the situation in Missouri for ten years, forces the conclusion that the business done by the Rio Grande is of such character and extent as to warrant the inference that it has, under the doctrine defined by this court as doing business, submitted it-

self to the jurisdiction of the courts of Missouri and is present there. Certainly it enjoys every advantage enjoyed by the Santa Fe in this case. The difference between the position of the Santa Fe and the Rio Grande on the question of "doing business" is that the Santa Fe concedes the point, while the Rio Grande assumes the contrary without argument.

The petitioner cites the case of *Green* v. *Chicago, B. & Q. R. Co., supra,* on another question, wherein this court held that "The business shown in this case was, in substance, nothing more than that of solicitation." Mr. Justice Moody, who delivered the opinion in the Green case refers to the case of *Denver & R. G. R. Co.,* v. *Roller,* 100 Fed. 738, apparently approving it, as follows:

> "In support of his contention that the defendant was doing business within the district in such a sense that it was liable to service there, the plaintiff cites *Denver & R. G. R. Co.* v. *Roller,* 49 L. R. A. 77, 41 C. C. A. 22, 100 Fed. 738, and *Tuchband* v. *Chicago & A. R. Co.,* 115 N. Y. 437, 22 N. E. 360. The facts in those cases were similar to those in the present case. But in both cases the action was brought in the state courts, and the question was of the interpretation of a state statute and the jurisdiction of the state courts."

It is interesting to note that Mr. Justice McKenna, who was one of the justices of the court in the Roller case, was also one of the justices of this court at the time it rendered the opinion in the Green case. It will be further observed that the railroad corporation

against whom the jurisdiction in the Roller case was challenged is the same corporation as one of the petitioners herein, the Rio Grande. The last observation is that all of the facts in the Roller case are present in the instant case as far as jurisdiction *in personam* the Rio Grande is concerned.

One difference between the Green case and the instant case as to the Rio Grande lies in the fact that in the former case the suit was brought in a Federal Court, while in the Roller case, as in the case at bar, the action was brought in the state court. That this difference is significant is inferable from the language of this court in the Green case, as follows:

> "The facts of those cases were similar to those in the present case. But in both cases the action was brought in the state courts, and the question was of the interpretation of a state statute and the jurisdiction of state courts."

This court, however, in the case of *International Harvester Co.* v. *Kentucky*, 234 U. S. 579, refers to the *Green* v. *Chicago, B. & Q. R. C., supra*, as "an extreme case."

See, also, *Reynolds* v. *Missouri, M. K. & T. R. Co.*, 233 Mass. 32, 123 N. E. 235, 224 Mass. 379, 113 N. E. 413, affirmed *per curiam* in *Missouri, M. K. & T. Ry. Co.* v. *Reynolds*, 255 U. S. 565, *Commercial Mutual Acc. Co.* v. *Davis, supra*, and *Washington-Virginia R. Co.* v. *Real Estate Trust Co.*, 238 U. S. 185.

On numerous occasions this court has said that decisions on questions of fact will not be set aside unless clearly erroneous. *New York Dock Co.*

v. *Pozman et al.*, 274 U. S. 117; *Commercial Mutual Acc. Co.* v. *Davis, supra.* In this case, the respondent is entitled to every favorable inference supporting jurisdiction that may result from the ruling of the Supreme Court of Missouri on denial of the writ of prohibition in this case and the issues of fact found by the respondent in the trial *nisi* of the issues here involved.

Other cases cited by petitioners on the question of lack of due process presupposes the absence of the fact of "doing business." The fallacy of the Rio Grande's position on the question of the validity of a possible judgment *in personam* against it, is its assumption without argument that the Rio Grande is not doing business in Missouri. The facts of this case and the decisions of this court clearly indicate in our opinion that the petitioner, Rio Grande, was doing business in Missouri sufficient to base a personal judgment against it.

If the jurisdiction against the Santa Fe is properly asserted by the Missouri court in this case, and if the Rio Grande is doing business in Missouri sufficient to warrant the inference that it has submitted to jurisdiction and is present there, it necessarily follows that jurisdiction is properly asserted against the Rio Grande *in personam.*

In the cases of *Michigan Central R. R. Co.* v. *Mix,* 278 U. S. 492, and *Davis* v. *Farmers Cooperative Equity Corporation,* 262 U. S. 312, the defendant corporations there sued were not "doing business" in the respective states where the suits were brought. That is not the situation with respect to the Rio Grande.

(2) JURISDICTION *in rem* AS TO THE RIO GRANDE.

BURDEN ON INTERSTATE COMMERCE CONSIDERED.

Of course, if this court determines that the Rio Grande is doing business in Missouri sufficient to warrant the inference that it has submitted to the jurisdiction of Missouri courts as hereinbefore contended, this fact, exclusive of others, would make reasonable any burden on interstate commerce under the rule announced in the case of *Atchison, Topeka & Santa Fe R. Co.* v. *Wells, supra,* one of the *"in rem"* cases relied on by the Rio Grande, and would dispose of this case.

But, the absence of doing business by the Rio Grande in Missouri is not sufficient in and of itself to deny to Missouri courts jurisdiction over the *property* of the Rio Grande which has been attached and garnisheed in this case. *State of Missouri* v. *Taylor, supra.*

It is our purpose now, therefore, to consider the reasonableness of the burden imposed on interstate commerce in this case as to jurisdiction *in rem* of the Rio Grande, without reference to the question of doing business. Our contention is—assuming, for purposes of argument only, that the Rio Grande is not doing business in Missouri—that the Missouri court nevertheless has jurisdiction over the property of the Rio Grande attached and garnisheed in this case.

The Rio Grande selected Delaware as the situs of its domicile; the Santa Fe, Kansas, and Curtis, Mis-

souri. Colorado is not the home of any party to the litigation, nor is it the home of all the witnesses. According to the sworn statement of the Rio Grande, some of its witnesses reside in Utah and some in New Mexico. The Circuit Court found (inferentially, at least, since plaintiff's verified motion (R. 83) raised this issue) that some of the witnesses reside in Missouri. Just where could the plaintiff bring his action against these defendants and be free from the charge that the prosecution of the same would unreasonably burden interstate commerce? Certainly, by the decision of every court in the land, he could sue the Rio Grande in Delaware, unless it should then aver that its legal existence was a mere hoax for the purpose of evading the laws of the state in which it actually owns a line of railroad, and, therefore, only a mere outlaw. In that event, it would be necessary for it to bring its witnesses four times as far to the place of trial in this case and in so doing pass them directly through the State of Missouri.

In the Hoffman case, this court said:

> "Even a foreign corporation is not immune from the ordinary processes of the courts of the state, where its business is entirely interstate in character. *International Harvester Co.* v. *Kentucky,* 234 U. S. 579, 34 Sup. Ct. 944, 58 L. Ed. 1479. It must submit, if there is jurisdiction, to the requirements of orderly, effective administration of justice, although thereby interstate commerce is incidently burdened."

So, also, this court in *Davis* v. *Farmer's Co-op. Equity Co., supra,* on this subject, said:

> "The requirements of orderly, effective administration of justice is paramount."

To hold that Curtis may continue his action against the Santa Fe in Missouri and yet be required to pursue the Rio Grande in a *separate* suit in Colorado or *Delaware,* would nullify the legal aphorism voiced by this court in the above quotations.

The case of *State of Missouri* v. *Taylor,* 266 U. S. 200, is directly in point and decisive of the question of jurisdiction over the property of the Rio Grande here attached. In that case a Delaware corporation sued in Missouri a Texas railroad corporation which had no place of business in said state, and had not consented to be sued there, and was not doing business there, on three claims for damages to freight shipments originating in Texas. One of the shipments was deliverable in Missouri where the negligence "for aught that appears" occurred in Missouri. The other two shipments were deliverable in other states and the negligence giving rise to these causes of action occurred in states other than Missouri. Service was obtained by garnishment of traffic balances due from connecting interstate carriers. The jurisdiction of the court was attacked on the ground that to require the defendant to appear in Missouri courts and defend would constitute an unreasonable burden on interstate commerce. This court, however, said:

> "* * * To require that, under such circumstances, the foreign carrier shall submit to suit

within a state to whose jurisdiction it would otherwise be amenable by process of attachment does not unreasonably burden interstate commerce."

A footnote of the opinion sheds light on this particular situation, in construing the opinion as being applicable to the facts in the present case. In the Taylor case, this court said:

> "Here the plaintiff consignee is a resident of Missouri—that is, has a usual place of business within the state; the shipment out of which the cause of action arose was of goods deliverable in Missouri; and, for aught that appears, the negligence complained of occurred within Missouri."

The footnote above mentioned refers directly to the statement, "the shipment of which the cause of action arose was of goods deliverable in Missouri," and is, as follows:

> "This is true only of one of the three shipments on account of which the action was brought. But if the inferior court had jurisdiction as to any one, it was obviously proper to deny the writ of prohibition."

That statement applies with great force here. If the state court here has jurisdiction to proceed against one of the joint tort feasors, the Santa Fe, it would be idle to say that proceeding against the other joint tort feasor, the Rio Grande, in the same action unreasonably burdens interstate commerce. That the liability of the Rio Grande is joint with that of the Santa Fe is not denied.

The petitioner Rio Grande asserts that all the witnesses reside in the State of Colorado. The motions

of the petitioners, their pleadings and the evidence submitted at the hearing before the respondent in the state court show that the witnesses necessary in the prosecution and defense of this case do not all reside in Colorado, but also reside in Missouri, Utah and New Mexico. Can it be said that requiring the Rio Grande to take witnesses from Colorado to Missouri would constitute a greater burden on interstate commerce, either in fact or theory, than to require said defendant to bring witnesses from Utah and New Mexico into Colorado?

In any event, the only employees of the railroads that the Rio Grande desires to use as witnesses are an assistant general manager, a chief signal maintainer, a signal foreman and a tower operator. Can it be that the absence of these four witnesses from Colorado will burden interstate commerce so unreasonably that as a matter of law this court must determine that the courts of Missouri have no jurisdiction over the property of the Rio Grande attached and garnisheed in that state in a suit by a *bona fide* resident thereof, who was forced to return to the state of his nativity—and from which he was but temporarily absent—because of his destitute and helpless condition in which he was placed by the joint negligence of both petitioners? Is it not more accurate to assert that the burden that would be placed on Curtis, by requiring him to bring his suit in Delaware, Kansas or Colorado, rather than in Missouri where it now is, would more nearly defeat the "requirements of orderly, effective administration of justice," which are paramount?

It would indeed seem incongruous with former decisions of this court and with reason, to assert that interstate commerce would not be impressed with an unreasonable burden by requiring the Santa Fe to submit to the jurisdiction of the Missouri court in this case, but that it would be an unreasonable burden on interstate commerce to require the Rio Grande to sit at the same counsel table and make the same defense with the same witnesses as required of the Santa Fe. The balance of convenience between the plaintiff going to Colorado and the Rio Grande continuing to defend in Missouri and the requirements of orderly, effective administration of justice, belie the assertion.

The Rio Grande is at liberty to take the depositions of these witnesses and offer them in evidence. It may be said that evidence by deposition is not satisfactory, but such a position is not only imaginary, but also, contrary to the law of the State of Missouri which requires a jury to give equal force, weight and effect to evidence offered by deposition as oral testimony from the witness stand. (*State* v. *Grant,* 79 Mo. 113, 137; *Elsner* v. *Supreme Lodge,* 98 Mo. 640, 11 S. W. 991, 992; *Jones* v. *St. Louis-San Francisco Ry. Co.,* 287 Mo. 64, 228 S. W. 780, 784; *Rudin Bros.* v. *Wells,* (Mo. App.) 29 S. W. (2d) 741, 742.) The plaintiff, Curtis, is entitled to whatever remedial advantages that inhere in the forum. *State of Missouri* v. *Taylor, ante.*

The fact that this action against the Rio Grande *in rem* could not be prosecuted against it in the fed-

eral courts of Missouri does not militate against the right of the plaintiff to bring his action in the Missouri state court. *State of Missouri* v. *Taylor, supra.* In the Taylor case it was contended that:

> "Original jurisdiction could not have been obtained by attachment in a federal court for Missouri, because personal service could not be made upon the Brownsville Company; and that, therefore, no court of the state could entertain a suit to enforce the claim."

Mr. Justice Brandeis, however, said:

> "The argument is unsound. Congress created the right of action. It might have provided that the right shall be enforceable only in a federal court. It might have provided that state courts shall have concurrent jurisdiction only of those cases which, by the applicable federal law, could, under the same circumstances, have been commenced in a federal court for the particular state. But Congress did neither of these things. It dealt solely with substantive law. As it made no provision concerning the remedy, the federal and the state courts have concurrent jurisdiction. The federal right is enforceable in a state court whenever its ordinary jurisdiction, as prescribed by local laws, is appropriate to the occasion, but is invoked in conformity with those laws."
>
> "Missouri conferred jurisdiction over claims of this nature upon the court in which the consignee sued. Under its law, this jurisdiction may be exercised, to the extent of applying property attached to the satisfaction of a claim, even though personal service cannot be made upon the defendant. That remedy is one which was not available to the consignee in the federal court of Missouri. But this fact is not of legal significance. The origin of the right does not affect the manner of

administering the remedy. The grant of concurrent jurisdiction implies that, in the first instance, the plaintiff shall have the choice of the court. As an incident he is entitled to whatever remedial advantage inheres in the particular forum. *Minneapolis & St. L. R. Co.* v. *Bombolis*, 241 U. S. 211, 221 60 L. ed. 961, 965, etc. No peculiarity of state procedure will be permitted to enlarge or to abridge a substantive federal right (citing cases). *But to enforce a claim by subjecting property within the state to its satisfaction, through attachment proceeding, does not enlarge the substantive right.*'

"The practice of obtaining in this way satisfaction of a claim *in personam* against an absent defendant is not one abhorrent to, or uncommon in, federal courts. In admiralty, district courts take original jurisdiction under such circumstances. *Atkins* v. *Fibre Disintegrating Co.*, 18 Wall 272, 21 L. ed. 841. At law, they do so on removal. When the case is removed, it proceeds to judgment in the Federal court, and the judgment is enforced there as against the attached property with the same effect as if the cause had remained in the state court. *Clark* v. *Wells*, 203 U. S. 164, 51 L. ed. 138, 27 Sup. Ct. Rep. 43."

The language above quoted and the reasoning is applicable to the case at bar. The plaintiff, a *bona fide* resident of Missouri, is entitled to whatever remedial advantage that inheres in the particular forum. Local laws of Missouri are appropriate to enforce the federal right, and jurisdiction in this case has been invoked in conformity with those laws. The enforcement of his claim by subjecting property within the state to its satisfaction, through attachment proceedings, as was done in the Taylor case, likewise does not enlarge his substantive right.

Particularly is this true in the case at bar, which is one under the Federal Employer's Liability Act—an act obviously intended by Congress to be for the benefit of employees engaged in interstate commerce. This act therefore "is to be construed liberally to fulfill the purposes for which it was enacted," *Jamison* v. *Encarnacion*, 281 U. S. 635, and cases there cited. It is a matter of common knowledge that railway employees are from time to time called away from their domiciliary states by reason of their employment, to reside in foreign states; that such migrations will be made from time to time; that in case of injury the employee's most natural and probable inclination is to return to the state of his original habitation. Shall an employee entitled to the benefits of the Federal Employer's Liability Act be deprived of its benefits because he was injured in a state to which he was called because of such employment in interstate commerce and because he returned to the state of his nativity—the only place where he can survive with the help of his family, from which he was but temporarily absent, and in which brings his action? Is such an interpretation a liberal construction of the Federal Employer's Liability Act? Would not such an interpretation penalize an employee for his co-operation with an interstate carrier?

DUE PROCESS OF LAW CONSIDERED.

The only case cited by petitioners involving jurisdiction over the property of the defendant foreign corporation is the case of *Atchison, T. & S. F. R. Co.* v. *Wells, ante.* This court there disposed of the question of due process of law in the following statement:

> "These facts (in the Wells case) did not render the property immune from seizure by attachment and garnishment. *Davis* v. *Cleveland, C. C. & St. Louis Ry. Co.*, 217 U. S. 157, 30 Sup. Ct. 463, 54 L. Ed. 708, 27 L. R. A. (N. S.) 823, 18 Ann. Cas. 907."

In *Davis* v. *Cleveland, etc., Ry. Co.*, 217 U. S. 157, a resident and citizen of Illinois brought suit in Iowa against the defendant, an Ohio corporation, on a cause of action arising in Illinois. The defendant railway company was not doing business in Iowa. Jurisdiction was obtained by the attachment and garnishment of traffic balances and other property of the defendant in Iowa. This court held that jurisdiction was thereby obtained, *in rem*, upon the defendant's property in Iowa.

PETITIONER'S AUTHORITIES DISTINGUISHED.

The only case cited by the Rio Grande involving an interpretation of the Federal Employer's Liability Act is the case of *Michigan Central* v. *Mix*, 278 U. S. 492. In the Mix case, the action was brought by the widow, who removed to St. Louis, Missouri, for the sole purpose apparently of instituting the suit. Referring to that fact, this court said:

> "For aught that appears, her removal to St. Louis shortly after the accident was solely for the purpose of bringing the suit, and because she was advised that her chances of recovery would be better than they would be in Michigan."

The affidavit filed on behalf of the plaintiff, Curtis, shows that:

> "Plaintiff, Ray Curtis, is and has been during his entire lifetime an actual and *bona fide* resident of the State of Missouri, except for a period of temporary absence while working for the defendants in the State of Colorado; that plaintiff now resides in Trenton, Grundy County, Missouri, in which said county he was born and raised and where his family and parents do now and have for many years resided."

And it further appears from the affidavit that Curtis returned to his home state because he is dependent upon his relatives for support. To require him to bring his suit in Colorado or Delaware would cast an unreasonable burden upon him, not contemplated by the Federal Employer's Liability Act, but contrary thereto. The decision of the respondent sustaining jurisdiction creates an inference that the return of Curtis to Missouri was not for the purpose of instituting suit, but because of his physical condition, over which he had no control, and the necessity of relying upon his family for support. The evidence supports this contention.

Furthermore, the Michigan Central Railroad Company was a Michigan corporation and a citizen and resident of the State of Michigan. In this case, the Rio Grande is not a Colorado corporation and is not a citizen of that state. In a *removable* suit in that state it would disclaim its Colorado residence, cling to its Delaware citizenship, and remove the case to the federal courts to thus deny the operative effect of the laws of Colorado.

Furthermore, there was no showing in the Mix case that witnesses resided in any place or state other than the State of Michigan, whereas, in this case, it is admitted by the railroad companies that witnesses reside in states other than Colorado, and it is proven beyond dispute that witnesses reside in the State of Missouri. A further distinction between the two cases is that in this case, the Santa Fe, a joint tort feasor, is properly suable in the courts of this state, whereas, the Michigan Central was alone responsible in the Mix case. Also, while it appears that the action was one under the Federal Employer's Liability Act, yet it does not appear that the attention of the court was directed to the difference between a case under a local state law, which should be interpreted by the courts of that state and a federal act applying the same in all of the states. See extracts from opinions in *State of Missouri* v. *Taylor, supra,* and *Green* v. *Chicago, B. & Q. R. Co., supra,* quoted in this brief.

In the case of *Davis* v. *Farmers' Co-Op. Equity Co.*, 262 U. S. 312, like the Mix case, there was only one alleged tort feasor. There was also not the slightest showing that any witnesses resided in the State of Minnesota, or that there was any reason whatever for going to that state and bringing the action. The defendant railroad corporation in the Davis case also was not engaged in doing business in the State of Minnesota sufficient to warrant the inference that it was present there. In the Davis case no question of jurisdiction over property of the defendant was involved, nor was it a case involving the Federal Employer's Lia-

bility Act. An extract from the Davis case quoted by petitioners (B. 14) inferentially supports the jurisdiction here asserted. It is there said:

> "But orderly, effective administration of justice clearly does not require that a foreign carrier shall submit to suit in a state in which the cause of action did not arise in which the transaction giving rise to it was not entered upon, in which the carrier neither owns nor operates a railroad, *and in which the plaintiff does not reside.*"

In the case at bar, Curtis, is a *bona fide* resident of the State of Missouri.

The distinguishing features of the case of *Atchison, T. & S. F. Ry. Co.*, v. *Wells*, 265 U. S. 101, from the case at bar are: the plaintiff in the Wells case was not a resident of the state where suit was brought; it does not appear that any witnesses resided in Texas; nor that any corporation properly suable in Texas, was jointly liable with the Santa Fe; nor that the action was under the Federal Employer's Liability Act.

The attempt of petitioners to distinguish the Taylor case, *supra*, in their brief page 16, from the case at bar, to which we refer in the order set out in petitioners' brief, is impotent:

First, This is also a proceeding *in rem* as to the Rio Grande; its property and freight balances have been attached and garnisheed and are being held subject to a final disposition of this case.

Second, The plaintiff in the case at bar is a resident of Missouri.

Third, While the negligence "for aught that appears" occurred in Missouri in the Taylor case, Mr. Justice Brandeis, in the footnote to that case said: "This is true only of one of the three shipments on account of which the action was brought. But if the inferior court had jurisdiction as to any one, it was obviously proper to deny the writ of prohibition."

Fourth, While one shipment was destined to Missouri, the other two shipments were not.

Fifth, The jurisdiction of the Missouri court over the Santa Fe in the case at bar makes the later condition analogous, that is, as Mr. Justice Brandeis said, "if the inferior court had jurisdiction as to any one, it was obviously proper to deny the writ of prohibition."

Referring to the case of *Davis* v. *Farmers' Co-Op. Equity Co., supra,* and the case of *Atchison, T. & S. F. Ry. Co.* v. *Wells, supra,* this court in the Taylor case said:

> "The facts of this case differ vitally from those involved there."

The fact that the petitioners are unable to successfully distinguish the Taylor case, *supra,* from the case at bar is determinative of this controversy.

Conclusion.

For the foregoing reasons it is respectfully urged that judgment be entered denying the writ of certiorari and that the judgment of the Supreme Court of Missouri be affirmed.

Respectfully submitted,

CLAY C. ROGERS,
Counsel for Respondent.

APPENDIX.

Missouri Laws Relating to Foreign Corporations.*

Section 728. Writs, how served on foreign corporations. Fourth, where the defendant is a corporation * * * organized under the laws of any other state or country, and having an office and doing business in this state, by delivering a copy of the writ and petition to any officer or agent of such corporation or company in charge of any office or place of business * * * and when had in conformity with this subdivision, shall be deemed personal service against such corporation and authorize the rendition of a general judgment against it (R. S. of Mo. 1929).

Section 742. Suits against railroads terminating opposite points in this state. All railroad corporations that own or operate roads terminating opposite to any point in this state, and which have offices or places of business in this state, shall be sued in the same manner as railroad corporations chartered by this state.

Section 743. Corporations of other states may be sued, how. Any corporation incorporated by any other state or country, and having property in this state, shall be liable to be sued, and the property of the same subject to attachment, in the same manner as individuals, residents of other states or countries, and having property, are now liable to be sued, and their property subject to be attached.

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*Revised Statutes of Missouri, 1929 (see next page).

Section 743. Corporations of other states may be sued, how. Any corporation incorporated by any other state or country * * * shall be liable to be sued * * * in the same manner as individuals, residents of other states or countries * * * are now liable to be sued. * * *

Section 4689. * * * or any railroad company duly incorporated and existing under the laws of any state of the United States may extend, construct, maintain and operate its railroad into and through this state, and for that purpose shall possess and exercise all the rights, powers and privileges conferred by the general laws of this state upon railroad corporations organized thereunder, and shall be subject to all the duties, liabilities and provisions of the laws of this state concerning railroad corporations, as fully as if incorporated in this state * * * and a corporation of another state, being a lessee of a railroad in this state, or running its engines and cars upon a railroad in this state under a license, permit or running arrangement, shall likewise be held liable for the violation of any of the laws of this state, and may sue and be sued in all cases and for the same causes and in the same manner as a corporation of this state might sue or be sued if operating its own road. * * *

Section 4598. Every company incorporated for the purpose of gain under the laws of any other state, territory or country, now or hereafter doing business within this state * * * the principal officer or agent in Missouri shall make and forward to the secretary of state, with the affidavits required a statement * * * which statement shall set out the location of its principal office or place in this state for the transaction of business, where legal service may be obtained upon it, by serving such agent. * * *

SUPREME COURT OF THE UNITED STATES.

No. 130.—October Term, 1931.

Denver and Rio Grande Western Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, Petitioners, *vs.* Ben Terte, Judge of the Circuit Court of Jackson County, Missouri, at Kansas City.	On Writ of Certiorari to the Supreme Court of the State of Missouri.

[January 4, 1932.]

Mr. Justice McReynolds delivered the opinion of the Court.

This writ of certiorari to the Supreme Court of Missouri brings up for review a judgment which denied a petition for prohibition without an accompanying opinion.

Following the local practice, the Denver and Rio Grande Western Railroad Company (Rio Grande) and the Atchison, Topeka and Santa Fe Railway Company (Santa Fe) presented their petition directly to the Supreme Court. After setting out the proceedings in an action against them pending in the Jackson County Circuit Court, it alleged that if the cause proceeded to trial an undue burden on interstate commerce would result; also the commerce clause of the Federal Constitution and the Fourteenth Amendment would be violated. It asked that the presiding Judge be restrained from entertaining further jurisdiction.

On August 26, 1930, Curtis, then residing in Missouri, brought the above mentioned action against both the Santa Fe and the Rio Grande under the Federal Employers' Liability Act. He sought damages for personal injuries said to have resulted from their joint negligence on December 26, 1929, while he was employed by them at an interlocking track and signal plant near Pueblo, Colorado.

A writ of attachment against the Rio Grande was served by garnishee process upon several railroad companies said to be indebted to it. Summonses for both defendants were served upon their agents.

Defendants, appearing specially, moved to quash the attachment and summonses and presented affidavits to support their motions. The plaintiff filed counter-affidavits. It appeared that properly to defend the cause would require attendance of witnesses from Colorado at large expense; also the attendance of some witnesses for the plaintiff who resided in Missouri. The trial court overruled the motions. Thereupon, the defendants petitioned the Supreme Court as above stated.

The Rio Grande, a Delaware corporation, operates lines which lie wholly within Colorado, Utah and New Mexico. It neither owns nor operates any line in Missouri; but it does own and use some property located there. It maintains one or more offices in the State and employs agents who solicit traffic. These agents engage in transactions incident to the procurement, delivery and record of such traffic. It is not licensed to do business in Missouri.

The Santa Fe, a Kansas corporation, owns and operates railroad lines in Missouri, Kansas, Colorado, and other States. It is licensed to do business in Missouri and has an office and agents in Jackson County. These agents transact the business ordinarily connected with the operation of a carrier by railroad.

After being injured at Pueblo, and before instituting his action against the railroad companies, Curtis removed to and became a bona fide resident and citizen of Missouri.

According to the doctrine approved in *Hoffman* v. *Foraker*, 274 U. S. 21, we think the Santa Fe was properly sued in Jackson County. The Supreme Court committed no error of which we can take notice by refusing to prohibit further prosecution of the action against that company. The mere fact that the Santa Fe was named a codefendant with the Rio Grande was not enough to defeat jurisdiction of the court over the former.

Under the rule approved in *Michigan Central R. R. Co.* v. *Mix*, 278 U. S. 492, the Rio Grande properly claimed exemption from suit in Jackson County. It was not necessary to join the two Railroad Companies in one action. Whatever liability exists is several. The prohibition against burdening interstate commerce

cannot be avoided by the simple device of a joint action. Nor can this be evaded merely by attaching the property of the non-resident railroad corporation. Obviously, the burden and expense which the carrier must incur in order to make defense in a State where the accident did not occur has no relation to the nature of the process used to bring it before the court.

The alleged residence in Missouri of persons whose testimony plaintiff supposed would be necessary to prove his claim was not enough to justify retention of jurisdiction by the Circuit Court. While this circumstance might enable plaintiff to try his cause there with less inconvenience than elsewhere, it would not prevent imposition of a serious burden upon interstate commerce. And, we have held, it is the infliction of this burden that deprives the courts of jurisdiction over cases like this. *Davis* v. *Farmers Cooperative Co.*, 262 U. S. 312. Further, as a practical matter, courts could not undertake to ascertain in advance of trial the number and importance of probable witnesses within and without the State and retain or refuse jurisdiction according to the relative inconvenience of the parties.

The judgment of the Supreme Court must be reversed. The cause will be remanded there for further proceedings not inconsistent with this opinion.

Reversed.

Mr. Justice STONE took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.